

10/622,419

Remarks/arguments:

Initially, applicant has reviewed the prior art cited against the newly cited reference to Phillips 4,933,525 and considers 4,786,773 worthy of consideration. Thus it teaches that the sensor in the microwavable container is spaced away from the food to be heated. Please pay attention to col 7, lines 28 to the end of col. 8.

After considering all the references cited, including 4,786,773, applicant has decided to present only claims 5 and 9, to further amend claim 20, and to add new claim 21. Turning now to claim 5, to claim 20 as amended, and to new claim 21, these claims recite "A polymerization temperature test element for a polymerization device for polymerizing a dental restoration product, the polymerization device having an energy source for irradiating the dental restoration product with one or both of light radiation and thermal radiation to effect polymerization of the dental restoration product", or similar language. Clearly this combination of features is not shown in the references. Initially, the examiner has chosen to give no weight to the preamble stating that "intended use has been continuously held not to be germane to determining the patentability of the apparatus." However, as pointed out in section 2111.02 of the MPEP, "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999). As a practical matter, the "energy source for irradiating a dental restoration product" is disclosed as "one or both of light radiation and thermal radiation to effect polymerization of the dental restoration product" not a microwave oven which is merely used for heating foods. Furthermore, dental restoration products are to be polymerized, not merely heated. Accordingly, it is believed that the preamble gives "life, meaning and vitality" to the claims. Accordingly, it is respectfully submitted that the various microwavable food heating dishes are not relevant and should not be considered relevant.

The examiner's attention is directed to recent en banc decision of the CAFC

dealing with claim interpretation. Thus the court stated in *Phillips v. AWH Corp.* (415 F. 3d 1303) as follows:

The first paragraph of section 112 of the Patent Act, 35 U.S.C. § 112, states that the specification

shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains . . . to make and use the same . . .

The second paragraph of section 112 provides that the specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Those two paragraphs of section 112 frame the issue of claim interpretation for us. The second paragraph requires us to look to the language of the claims to determine what "the applicant regards as his invention."

The court continued:

The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation. See *Innova*, 381 F.3d at 1116. That starting point is based on the well-settled understanding that inventors are typically persons skilled in the field of the invention and that patents are addressed to and intended to be read by others of skill in the pertinent art. See *Verve, LLC v. Crane Cams, Inc.*, 311 F.3d 1116, 1119 (Fed. Cir. 2002) (patent documents are meant to be "a concise statement for persons in the field"); *In re Nelson*, 280 F.2d 172, 181 (CCPA 1960) ("The descriptions in patents are not addressed to the public generally, to lawyers or to judges, but, as section 112 says, to those skilled in the art to which the invention pertains or with which it is most nearly connected.").

Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification. This court explained that point well in *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998):

It is the person of ordinary skill in the field of the invention through whose eyes the claims are construed. Such person is deemed to read the words used in the patent documents with an understanding of their meaning in the field, and to have knowledge of any special meaning and usage in the field. The inventor's words that are used to describe the invention—the inventor's lexicography—must be understood and interpreted by the court as they would be understood and interpreted by a person in that field of technology. Thus the court starts the decision making process by reviewing the same resources as would that person, *viz.*, the patent specification and the prosecution history.

See also *Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) ("We cannot look at the ordinary meaning of the term . . . in a vacuum. Rather, we must look at the ordinary meaning in the context of the written description and the prosecution history."); *V-Formation, Inc. v. Benetton Group SpA*, 401 F.3d

1307, 1310 (Fed. Cir. 2005) (intrinsic record "usually provides the technological and temporal context to enable the court to ascertain the meaning of the claim to one of ordinary skill in the art at the time of the invention"); Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc., 375 F.3d 1341, 1351 (Fed. Cir. 2004) (proper definition is the "definition that one of ordinary skill in the art could ascertain from the intrinsic evidence in the record").

In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. See *Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001) (holding that the claims did "not require elaborate interpretation"). In such circumstances, general purpose dictionaries may be helpful. In many cases that give rise to litigation, however, determining the ordinary and customary meaning of the claim requires examination of terms that have a particular meaning in a field of art. Because the meaning of a claim term as understood by persons of skill in the art is often not immediately apparent, and because patentees frequently use terms idiosyncratically, the court looks to "those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean." *Innova*, 381 F.3d at 1116. Those sources include "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." *Id.*; see also *Gemstar-TV Guide Int'l, Inc. v. Int'l Trade Comm'n*, 383 F.3d 1352, 1364 (Fed. Cir. 2004); *Vitronics*, 90 F.3d at 1582-83; *Markman*, 52 F.3d at 979-80.

In view of the above it applicant's position that the United States Patent Office, which operates under the same statute as the Courts cannot interpret claims in a differing manner. Accordingly, the language of the claims set forth what applicant regards as his invention and it should not be ignored by the Patent Office during the examination of the claims. Thus, it is respectfully submitted that the examiner is in error in his rejection of claim 1 as unpatentable over the references, particularly when one considers the intended use.

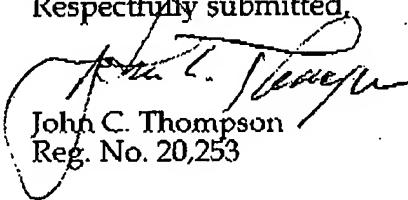
Furthermore, even if the prior art is considered relevant, the subject matter of the various references do not teach the subject matter of the claims. Claim 5 recites "a base element (20); a centrally located receipt region (12) carried by the base element (20) and ... the base element (20) includes a floor surface (26), and the receipt region is disposed centrally of the base element (20) and extends beyond the floor surface." This combination of features, along with the other features set forth in claim 5, are clearly not taught by the prior art. Accordingly, this claim should be allowed. Claim 20 is similar

to claims 5 and should be allowed for the same reason. In addition, none of the reference teach temperature sensitive elements whose color change is irreversible.

Claim 9, which has been edited to improve its form, recites "the color indicia of each color-temperature indicator (32, 34) having the characteristic that at least one of its brightness and its original color changes in an irreversible manner upon reaching a predetermined release temperature unique to the respective color-temperature indicator (32, 34)." The prior art cited and applied by the examiner, as well as newly cited 4,786,773, do not disclose this claimed feature. Accordingly, this claim is also deemed to be allowable.

In that all claims remaining in this application are deemed to be allowable for the reasons set forth above, the allowance of this application is respectfully requested.

Respectfully submitted,



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petition for a two month extension of time
extra independent claim fee